IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

Crl.MC.No. 3237 of 2007()

PETITIONER: ACCUSED:

T.P.RAGHU RAMAN, CUCCOO,
E.C.ROAD, M.O.WARD,
ALAPUZHA.

BY ADV. SRI.S.RAJEEV

RESPONDENT: STATE:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 25/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KSS

R.BASANT, J

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Crl.M.C. No. 3237 Of 2007

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Dated this the 25th day of October, 2007

ORDER

The petitioner faces indictment in a prosecution under Sec.138 of the Negotiable Instrument Act. Cognizance was taken as early as in 2005 as can be seen from the number assigned to the case as C.C.No.1/2005. The petitioner was once enlarged on bail. Later consequent to nonappearance of the petitioner before the learned Magistrate a warrant of arrest has been issued against the petitioner.

2.The learned counsel for the petitioner submits that the petitioner is laid up. He is unable to move about and in these circumstances, the petitioner cannot physically appear before the learned Magistrate. The petitioner is willing to appear before the learned Magistrate through counsel to ensure expeditious disposal of the case. The petitioner may be permitted to appear though counsel, submits the learned counsel for the petitioner.

3. It is for the petitioner to appear before the learned Magistrate and make appropriate application for exemption from personal presence of the petitioner under Section 205 Cr.P.C . Personal presence of the petitioner need not be insisted to consider such application for exemption. Such application must be considered by the

learned Magistrate on merits and in accordance with law. The pendency of the non bailable warrant against the petitioner or non appearance on the date of filing such application cannot be reckoned as sufficient reason for not considering such application on merits.

4. This Crl.M.c. is dismissed with the above observations. In the peculiar facts and circumstances of the case, there shall be a direction (identical direction was already issued in Crl.M.C.No.3167/2007 in respect of C.C.No.703/2004 before the same Court) that the warrant of arrest issued against the petitioner shall not be executed till 5.11.07, before which date, the petitioner must appear through counsel and make necessary application before the learned Magistrate under Section 205 Cr.P.C.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE